IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.190 OF 2006

IN

NOTICE OF MOTION NO.2918 OF 2005

IN

SUIT NO.4500 OF 1974

WITH

CIVIL APPLICATION NO.260 OF 2006

Habib B.Khan & Ors. ...Appellants

Versus

The Trustees of the Port of Bombay ...Respondents

.....

Ms.Geeta Shastri i/b M/s.Khilnani & Co. for Appellants.

Mr.U.J.Makhija with Mr.A.D.Fegade for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

MARCH 14, 2006.

P.C.

1. Not on Board. Upon mentioning, taken on Board.

2. Heard Counsel for the parties.

3. Admit. Mr.Fegade waives notice for Respondent No.1, who is the contesting Respondent. No relief is claimed against other Respondents. Accordingly, as short question is involved, Appeal is taken up for hearing forthwith, by consent.

4. By impugned order dated 1st March 2006, the Trial Court disposed of the application by giving time to deposit the balance amount in terms of order dated 23rd August 2005 before 14th March 2006. In this Appeal, the Counsel for the Appellants contends that the amount referred to in order dated 23rd August 2005 also includes interest component and it will be unfair to require the Appellants to deposit that amount.

5. It is not open for the Appellants to make that grievance in the present Appeal. This is so because the order dated 23rd August 2005 has not been challenged and is allowed to become final. In that order, obstructionists were directed to deposit amount of Rs.22,62,460/- (Rupees Twenty-two

Lakhs Sixty-two Thousand Four Hundred Sixty) within eight days from the date of the order. Indeed, the Appellants deposited part amount and moved for extension of time, which application has now been refused.

6. Suffice it to observe that the limited grievance that needs to be addressed in this Appeal is whether the Court below ought to have granted further time to the Appellants to deposit the balance amount indicated in the order dated 23rd August 2005. In my opinion, no fault can be found with the order of the lower Court in requiring the Appellants to deposit the amount within two weeks from 1st March 2006 as has been ordered. However, by way of indulgence, and on the assurance given by Appellants before this Court through their Counsel on instructions of the Appellant No.1 himself, limited indulgence is shown to the Appellants by accepting the request to permit them to deposit further sum of Rs.5,00,000/- (Rupees Five Lakhs) within one week from today and the balance amount out of the amount referred to in order dated 23rd August 2006 i.e. Rs.22,62,460/- (Rupees Twenty-two

Lakhs Sixty-two Thousand Four Hundred & Sixty) after giving adjustment to amounts already deposited including the amount of Rs.5,00,000/- (Rupees Five Lakhs), to be deposited within one week from today. Besides, the balance amount will be deposited within three weeks from today, failing which, the interim protection granted to the Appellants in terms of order dated 23rd August 2005 will stand vacated forthwith on committing any default.

7. Appeal disposed of on the above terms.

8. In view of this order, Civil Application is also disposed of. Counsel for Respondent No.1 on instructions of Mr.Fegade, Advocate, assures that Vakalatnama of Mulla & Mulla & Craigie Blunt & Caroe will be filed within one week from today.

A.M.KHANWILKAR, J.